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Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/29, provides information on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. It addresses continued Israeli settlement activity, settler violence and accountability, Palestinian detainees, including children in Israeli custody, as well as business and human rights in relation to the settlements. The report also includes summaries of the submissions received from Member States.

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I. Background

1. In its resolution 22/29 on the follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report to the Council at its twenty-fifth session. The present report, submitted pursuant to that request, contains the information requested and received from States to which the fact-finding mission addressed recommendations, as well as information gathered directly by the United Nations. It should be read in conjunction with the recent reports of the Secretary-General and the High Commissioner on the situation of human rights in the Occupied Palestinian Territory.[1]

II. Overview

2. In its report, the fact-finding mission made six recommendations, of which four were addressed to the State of Israel. Basing itself on article 49 of the Fourth Geneva Convention, the mission called upon Israel to cease all settlement activities without preconditions; to immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory; and to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that were a result of the settlements, in accordance with its international obligation to provide effective remedy. The mission noted that, where necessary, steps should be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community.

3. In addition, the fact-finding mission called upon Israel to put an end to the human rights violations linked to the presence of settlements, and to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity. It furthermore urged Israel to put an end to arbitrary arrests and detention of Palestinians, especially children, and to observe the prohibition of the transfer of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention.

4. In its report, the fact-finding mission called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations.

5. Lastly, the fact-finding mission stated that private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights. In this regard, the mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human

[1] A/68/513, A/68/502, A/HRC/25/38, A/HRC/25/40 and A/HRC/24/30.

rights throughout their operations. The mission recommended that the Working Group on Business and Human Rights be seized of this matter.

III. Status of implementation of the recommendations of the fact-finding mission

A. Israeli settlement activity and recourse to remedy for Palestinians

6. As noted in the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, submitted to the General Assembly at its sixty-eighth session (A/68/513), Israel has continued to play a leading role in the creation and expansion of settlements in violation of international law. Notwithstanding the recommendations made to Israel by the fact-finding mission in its report and the renewal of peace negotiations mediated by the United States of America, Israel has continued to promote settlement expansion. As affirmed by the Human Rights Council in its resolution 22/29, Israeli settlement activities undermine international efforts with respect to the peace process and the realization of a two-State solution.

7. From March to November 2013, plans for at least 8,943 new settlement units were promoted by the Government of Israel in the West Bank, including East Jerusalem.[2] Israel has also made a number of public announcements regarding settlement construction, for example on 30 October, when it announced the construction of 5,000 new units in the West Bank, including East Jerusalem, a day after the release of 26 Palestinian prisoners in the context of the peace process. The Secretary-General publicly deplored the continuing expansion of Israeli settlements in the West Bank, including East Jerusalem, on a number of occasions, and has repeatedly stated that settlements are in violation of international law, and that all settlement activity in the West Bank and East Jerusalem must cease.[3] He urged Israel to heed the calls of the international community and abide by its commitments under international law and the Quartet road map.[4]

8. The continued fragmentation of the West Bank, including East Jerusalem, through Israeli settlement expansion has gone hand-in-hand with the construction of the wall, the destruction of Palestinian-owned property and the forcible displacement of Palestinian civilians, including Bedouin communities. These acts violate Israel's obligation to protect the population under occupation and run counter to the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 4 July 2004, and may have further undermined the possibility for the Palestinian people to realize their right to self-determination through the creation of a viable State.[5]

9. As at November 2013, Israel had not provided remedy for Palestinian victims for the harm suffered as a consequence of human rights violations resulting from settlements. The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, established in 2007, collected more than 38,500 claims and more than half a million supporting documents in the Occupied Palestinian Territory. Of

[2] See A/HRC/25/38.

[3] See www.un.org/sg/statements/index.asp?nid=7314 and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[4] See www.un.org/News/Press/docs/2013/sgsm15108.doc.htm and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[5] See A/HRC/24/30.

these claims, to date 8,994 cases have been reviewed by the Board of the Register and deemed valid for inclusion in the Register.[6]

B. Settler violence and accountability

10. With regard to settler violence, in her most recent report submitted to the Human Rights Council on the implementation of resolution 22/26,[7] the High Commissioner highlighted the failure of Israel to maintain public order, contain settler violence, address the lack of meaningful accountability and afford protection from the said violence. Since February 2013, Israeli settlers have continued to attack Palestinians and their property in the West Bank, including East Jerusalem, despite Israel's obligation under international law to protect Palestinians and their property from acts of violence by settlers, to ensure accountability for crimes committed and to provide remedy for violations suffered by Palestinians. Between 2005 and 2013, only 8.5 per cent of the investigations opened in relation to settler violence incidents in the West Bank resulted in indictments, and some 84 per cent of the investigations were closed, owing mainly to investigatory failures, including the lack of identification of suspects and the inability to collect evidence for prosecution.[8]

C. Palestinian detainees, including children in Israeli custody

11. The fact-finding mission called for Israel to put an end to arbitrary arrests and detention of Palestinians, especially children. As at 1 October 2013, 5,046 Palestinians were in Israeli detention. A total of 135 of them were in administrative detention on security grounds, without charge or trial; well over half of them had been held for more than six months, and some for more than three years.[9] In this connection, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Secretary-General, the High Commissioner, and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories have documented the treatment of Palestinian detainees, including children in Israeli custody.[10]

12. In February 2013, the United Nations Children's Fund (UNICEF) issued a report in which it documented significant alleged violations of children's rights in the West Bank, noting that the ill-treatment of Palestinian children who come in contact with the Israeli military detention system appeared to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing.[11]

13. UNICEF issued an update report in October 2013 concerning progress made by the Israeli authorities towards implementing some of the 38 recommendations contained in its previous report. The actions taken by the Israeli Military Advocate General included, inter alia, an agreement by the Israeli Defense Forces Central Command for the West Bank to pilot a test summons of children in certain areas of the West Bank, in lieu of night arrests,

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[6] A/ES-10/599, annex. See also www.unrod.org.

[7] A/HRC/25/38.

[8] A/68/513, para. 52. See also A/68/502.

[9] A/HRC/25/40.

[10] A/HRC/23/21, A/HRC/24/30, A/HRC/25/40 and A/68/379.

[11] Children in Israeli Military Detention, available from http://unispal.un.org/UNISPAL.NSF/3822b5e39951876a85256b6e0058a478/1ee6b43ba34634f885257b260051c8ff?OpenDocument.

and the issuance of military orders reducing the time that a Palestinian child could be detained prior to appearing before a military court judge for the first time, as well as regulating the duration of remand prior to indictment.[12]

D. Business and human rights in relation to the settlements

14. In its resolution 22/29, the Human Rights Council called upon the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Council resolution 17/4 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. Pursuant to resolution 22/29, the Working Group on the issue of human rights and transnational corporations and other business enterprises discussed the Council's request to fulfil its mandate accordingly during its fifth session, and decided to issue a statement thereon before the twenty-sixth session of the Council.[13]

15. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reported on the involvement of companies that profit from the construction and maintenance of settlements as well as other activities related to settlements in the Occupied Palestinian Territory.[14] In his most recent report (A/68/376), the Special Rapporteur explored the implications of corporate involvement by way of a model of legal analysis to assess the probability of liability, including international criminal liability, for corporate complicity in breaches of international law related to illegal settlements.

16. In this context, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories also reported on the involvement of companies profiting from the settlements, and noted that businesses need to exercise due diligence in the light of the potential legal and reputational consequences for businesses associated with Israel's settlement enterprise.[15]

IV. Submissions by Member States pursuant to resolution 22/29

17. On 16 October 2013, the Office of the High Commissioner (OHCHR) addressed notes verbales to all Permanent Missions to the United Nations Office and other international organizations in Geneva (except Israel and the State of Palestine), in which it requested information on any steps that their Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report (A/HRC/22/63), and in particular with regard to those contained in paragraphs 116 and 117 thereof.

18. Separate notes verbales were addressed to the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine, in which OHCHR requested information on any steps that their respective Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report. At the time of the preparation of the present report, no

[12] See www.unicef.org/media/media_70666.html.
[13] A/HRC/WG.12/5/1.
[14] See A/67/379, A/68/376and A/HRC/23/21.
[15] A/68/379, para. 38.

information had been received from either the Permanent Mission of Israel or the Permanent Observer Mission of the State of Palestine.

Cuba

19. The Permanent Mission of Cuba submitted a note verbale dated 7 November 2013. Cuba condemned the colonization by Israel of the occupied Palestinian territories, including East Jerusalem, and the violence, terror, provocation and incitement by Israeli settlers against Palestinian civilians and property, including homes, orchards, mosques and churches. Cuba deplored all illegal Israeli measures associated with the continued colonization of the Occupied Palestinian Territories, including the destruction of vast tracts of land, and the construction and expansion of illegal settlements, outposts and associated settlement infrastructure.

20. Cuba also condemned the demolition of Palestinian homes, the revocation of residency permits, the ongoing construction of the wall and the imposition of arbitrary and racist restrictions on residence and movement through a regime of permits and checkpoints throughout occupied Palestine, including within and around East Jerusalem. Cuba expressed concern at the separation of East Jerusalem from the rest of the occupied territory and the fragmentation of Palestinian territory into isolated areas and walled cantons. It also expressed its concern at the displacement of thousands of Palestinians in the occupied Palestinian territories, including many Bedouin families.

21. Cuba stated that such policies and practices by Israel, the occupying Power, constituted serious violations of international law and a flagrant defiance of United Nations resolutions and the advisory opinion of the International Court of Justice of 9 July 2004. In this regard, Cuba called for the prompt implementation of the mandate of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory.

22. Cuba noted that there was an incompatibility between the peace process negotiations and the practice of illegal colonization, which aimed to impose a unilateral solution by creating facts on the ground through the illegal acquisition of land and de facto annexation of Palestinian territory. It also noted that Israel's illegal colonization seriously undermined the contiguity, integrity, unity and viability of the Occupied Palestinian Territory and threatened the prospects of a peaceful two-State solution within the borders of 1967. Cuba affirmed that illegal settlement activities remained the largest obstacle to peace, which undermined all efforts to end the Israeli occupation of Palestinian territory, including East Jerusalem.

23. Cuba stressed that Israel had no jurisdiction over the Occupied Palestinian Territory, including the "illegal" settlements, and urged the international community to continue its efforts to achieve compliance with the resolutions adopted by the Security Council, the General Assembly and the Human Rights Council.

Denmark

24. In a note verbale dated 12 November 2013, the Permanent Mission of Denmark stated that Denmark was pursuing a peaceful settlement of the Israeli-Palestinian conflict and that it actively supported the ongoing efforts made by the two parties to reach a peace agreement. Denmark associated itself fully with the efforts made by the United States of America in recent months, and noted that the present situation offered more hope than in the past few years.

25. Denmark pointed out that, as a member of the European Union, it fully associated itself with the policy and initiatives undertaken by the European Union as a whole, as well as the various efforts made by the European External Action Service and the Commission of the European Union to further peace and justice.

26. Denmark also pointed out that, in October 2012, it had issued guidance to Danish retailers on labelling certain settlement products on a voluntary basis. The correct identification of the country of origin was required for all products, and the guidance issued by the Government of Denmark prohibited the labelling of products from the Occupied Palestinian Territory as originating from "Israel". According to the guidance, settlement produce could be labelled as "Origin: the West Bank" or "Produced at the West Bank".

European Union

27. According to the note by the Permanent Delegation of the European Union submitted dated 21 November 2013, the European Union had consistently regarded Israeli settlements as illegal under international law and an obstacle to peace. Continued settlement expansion undermined the prospects of a negotiated resolution of the conflict by jeopardizing the possibility of a contiguous and viable Palestinian State, and that of Jerusalem, as the future capital of two States.

28. The European Union also pointed out that, on 19 July 2013, it had published guidelines on the eligibility of Israeli entities for European Union funding, in conformity with a series of unanimous political positions taken by the Foreign Affairs Council. This included the conclusions by the Council on the Middle East peace process of 10 December 2012, according to which all agreements between the State of Israel and the European Union had to, in accordance with international law, indicate unequivocally and explicitly their inapplicable nature to the territories occupied by Israeli in 1967. It also referred to the decision by the Council with regard to the Occupied Palestinian Territory, which stated that "settlement activity will not benefit from any sort of EU funding or programmes". The European Union also noted that these guidelines were in line with the long-standing position of the European Union not to recognize the sovereignty of Israel over the occupied territories or to consider them part of Israel.

29. The European Union reaffirmed its commitment to ensure continued, full and effective implementation of existing European Union legislation and bilateral agreements applicable to settlement products, and referred to a revised notice to importers issued on 3 August 2012 concerning imports from Israel to the European Union. It also referred to an earlier notice, published on 25 January 2005, in which operators had been reminded that products produced in the Israeli settlements located within the territories brought under Israeli administration in June 1967 were not entitled to benefit from preferential tariff treatment under the European Union-Israel Association Agreement.

30. The European Union also noted that, since 1 February 2005, the exclusion of settlement goods from preferential treatment has been implemented in the European Union in accordance with a "technical agreement" concluded by the European Union and Israel, whereby the postal code and the name of the city, village or industrial zone where production conferring originating status had taken place appeared on all proof of preferential origin issued, or made in Israel. Member States custom authorities also checked whether the postal codes appearing on Israeli proof of origin presented to them corresponded to any of the postal codes appearing in the list of non-eligible locations made available to them by the Commission, and refused preference where it was. It noted that the list of non-eligible locations had been made public as a result of the afore-mentioned revised notice of 3 August 2012.

31. In addition, on 22 June 2013, the European Commission had published implementing regulation OJEU L-170 on marketing standards that excluded fresh fruit and vegetables in the occupied territories from the possibility of being certified by Israeli authorities. The European Union also expressed its belief that the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, had to be applied globally, and called on European companies to implement the Guiding Principles in all circumstances, including in Israel and the Occupied Palestinian Territory.

Ireland

32. In a note submitted by the Permanent Mission of Ireland on 6 November 2013, the Government of Ireland pointed out that it did not recognize any transfer of sovereignty or annexation of Palestinian territory occupied by Israel in 1967 pending an agreement between the parties to the conflict. Ireland had consistently affirmed that the establishment of Israeli settlements in the Occupied Palestinian Territory was in breach of international law.

33. Ireland was considering the formulation of a national plan of action for the implementation of the Guiding Principles on Business and Human Rights. It was not aware of any Irish businesses engaged in activities in Israeli settlements. It stated that the website of the Department of Foreign Affairs and Trade of Ireland carried a warning to persons considering investing in or buying property in the settlements with regard to their legal status. The questions of access to the market and the treatment and labelling of goods produced in settlements were determined at the level of the European Union.

Saudi Arabia

34. In a note verbale dated 23 October 2013, the Permanent Mission of the Kingdom of Saudi Arabia stated that Arabia had no political, economic, trade or investment relations with Israel or with any companies referred to in the recommendation contained in paragraph 117 of the report (A/HRC/22/63) or any of their activities.

Syrian Arab Republic

35. In a note verbale dated 6 November 2013, the Permanent Mission of the Syrian Arab Republic stated that the report of the fact-finding mission had reaffirmed the "viciousness" of Israeli policies and practices towards the Palestinian people, their property and land. It noted that the said policies and practices demonstrated Israel's contempt for international humanitarian and human rights law.

36. The Syrian Arab Republic endorsed the findings of the report of the fact-finding mission and affirmed that the continued occupation of Arab territories since 1967 was the root cause of the human rights violations witnessed. It called upon Israel to comply with United Nations resolutions, including Security Council resolution 242 (1967), and to withdraw from the Palestinian territories, including East Jerusalem, occupied since 1967. This was the only solution that would enable the Palestinians to enjoy fully their right to self-determination and to establish an independent State.

37. The Syrian Arab Republic was fully cognizant of the implications of the practices of the occupying Power in the Palestinian territories, given that Israel committed the same violations in the occupied Syrian Golan. The Syrian Arab Republic asserted that its call for Israel to end the occupation did not contradict the recommendations of the fact-finding mission, and noted that the recommendations contained in the report of the mission were temporary measures needed to mitigate the impact of the occupation, including settler violence, and to halt the encroachment on Palestinian land through illegal settlement construction.

38. In conclusion, the Syrian Arab Republic welcomed the report of the fact-finding mission and commended the efforts to seek the truth in an independent, apolitical and impartial manner. It also expressed its willingness to cooperate by furthering the implementation of the recommendations outlined by the mission in its report in order to end Israeli violations of the Palestinian people. Finally, the Syrian Arab Republic urged that serious measures be taken to end the occupation of all Arab territories occupied since 1967.